

New language appears like this
~~Stricken language appears like this~~

ADOPTED BY THE
MAYOR AND COUNCIL

PROPOSED ORDINANCE NO. _____

RELATING TO NEIGHBORHOOD PRESERVATION; AMENDING CHAPTER 16 OF THE TUCSON CODE, THE "NEIGHBORHOOD PRESERVATION ORDINANCE"; ADDING AND AMENDING DEFINITIONS; CORRECTING REFERENCES TO SOLID WASTE MANAGEMENT; AMENDING MINIMUM REQUIREMENTS FOR HEATING AND COOLING OF DWELLINGS; AMENDING PROVISIONS RELATED TO ACCESSORY STRUCTURES; ADDING REQUIREMENTS FOR DISPLAY OF PROPERTY ADDRESS; AMENDING PROHIBITION OF ACCUMULATED VEGETATION; ADDING PROHIBITION OF EXTERIOR HAZARDS AND ATTRACTIVE NUISANCES; AMENDING DUTIES RELATED TO VACANT AND UNSECURED STRUCTURES; AMENDING REQUIREMENTS FOR PERMITTED STORAGE OF JUNKED OR INOPERABLE VEHICLES; AMENDING PENALTIES FOR GRAFFITI VIOLATIONS; AMENDING REGULATION OF EXCESSIVE NOISE AND UNRULY GATHERINGS; ADDING PROHIBITION OF STREET AND SIDEWALK OBSTRUCTIONS; ADDING PROHIBITION OF POSTING HANDBILLS; PROVIDING FOR ADMINISTRATIVE APPEAL BY LAWFUL TENANTS; PROVIDING FOR ABATEMENT OF HAZARDOUS EXCAVATIONS; AND AMENDING PROCEDURES RELATED TO APPEALS FROM THE BOARD OF APPEALS; BY AMENDING CHAPTER 16, ARTICLES I, II, IV, V, VI, AND VII, SECTIONS 16-3, 16-11(B), 16-12, 16-13, 16-14(B), 16-15(B), 16-30(B), 16-31(B), 16-32, 16-45, 16-60(A), 16-61, 16-62, 16-73, AND 16-74(A) AND ADDING A NEW 16-35 AND 16-36 OF THE TUCSON CODE; REPEALING SECTION 11-57 OF THE TUCSON CODE; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Chapter IV, Sections 1(19) and Chapter VII, Sections 1 (2, 12, 14, 18, 19, 27, 32 and 33) of the Tucson City Charter, Mayor and Council may pass and adopt ordinances that promote and protect the health, safety, life, welfare and property of the inhabitants of this City;

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 16, Article I, Section 16-3, is amended
to read as follows:

Sec. 16-3. Definitions.

* * *

Addressing Official means the official(s) designated and authorized by the City Manager to make determinations regarding the address display requirements set forth in this Ordinance; or any authorized representative or designee of that official.

Attractive nuisance means a condition that may reasonably be expected to attract children and that is dangerous to children because of their inability to appreciate the hazard. **[Source – Scottsdale code, modified; also Black's dictionary; 1997 UHC]**

* * *

Code official means the official(s) designated and authorized by the city manager to administer and enforce this chapter, or any duly authorized representative or designee of that official. Code official includes any peace officer, fire code official, city code enforcement officer or designated refuse officer. In the context of violations that are classified exclusively as criminal offenses in this ordinance, the code official is the chief of police or the chief's designee. ~~For the purposes of this Ordinance, code official does not include the fire code official.~~ **[Adds fire back in because of address requirements; vacants]**

* * *

Excavation means any well, shaft, basement, pit, tunnel, trench, hole or other like or similar removal of earth material. **[Source: Phoenix NPO Sec. 39-3, modified with language from IBC Chapter 36 local amendments, removing size references]**

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Handbill includes any sign, notice, placard, poster, paper, advertising circular, sticker, card, leaflet, or other similar item calculated to attract the attention of the public.

* * *

Junked motor or inoperable vehicle means any motor vehicle which is, at a minimum, of a type subject to registration under A.R.S. Title 28 but does not have a lawfully affixed unexpired number or license plate assigned to the vehicle by any state or any trailer or camper shell, and in addition, that exhibits one or more of the following conditions: which is wrecked, partially or fully dismantled, abandoned, stripped, substantially damaged, inoperative, inoperable, unused, scrapped, having the status of a hulk or shell, discarded, or unable to be safely operated. [Sources: Phx NPO; Scottsdale NPO; ARS 28-101(53) for "vehicle"]

* * *

Recyclable materials (also recyclables) means those materials that are listed in the rules, procedures and regulations promulgated by the director of solid waste management Utility Services as having recycle value.

Refuse means all waste materials, including but not limited to greenwaste, garbage, waste generated by animals or pets, or recyclables.

* * *

Uncontained refuse means any refuse that is not contained according to the provisions of this chapter or authorized by the rules, procedures and regulations promulgated by the director of solid waste management Utility Services.

Vacant structure means any unoccupied or illegally occupied structure. [Source: Phx NPO 39-3]

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SECTION 2. The Tucson Code, Chapter 16, Article II, Section 16-11(B), is amended to read as follows:

Sec. 16-11. Building Interior.

* * *

(b) *Heating, cooling and ventilation systems*

- (1) *Heating.* Every dwelling unit, guest room, and congregate residence shall be provided, in at least one habitable room, with safe operable heating facilities which are properly installed and maintained in a sound condition and are capable of providing adequate heating, appropriate for the climate, to assure a safe living environment, maintaining a room temperature of seventy (70) degrees Fahrenheit in all habitable rooms. ~~Temperature measurements shall be made in the center of the room, five~~

~~(5) feet above the floor. Heating facilities shall be installed and maintained in a safe condition, in a state of good repair, and in accordance with applicable codes. All heating facilities shall be free from health hazards associated with ventilation, mounting, electrical and gas connections and other defects. Unvented fuel-burning heaters must be of a listed and approved type, and are prohibited as the sole source of heating. Ovens, stoves or ranges, or other cooking appliances cannot be used for the purpose of heating any portion of a dwelling. [Source: Scottsdale Code 29.1-15; Tempe 21-34]~~

- (2) *Cooling.* Every dwelling unit, guest room, and congregate residence shall be provided, in at least one (1) habitable room, with either mechanical cooling, or an alternate cooling method. ~~Mechanical c~~Cooling facilities shall be installed and maintained in a safe condition and in accordance with the manufacturer's recommendations, and shall be capable of providing adequate cooling, appropriate for the climate, to assure a safe living environment. Evaporative cooling shall be maintained to be free of excessive rust, corrosion or mineral deposits that limit proper operation. maintaining a temperature of eighty (80) degrees when the ambient outside temperature is one hundred and five (105) degrees or less. Evaporative cooling shall follow the manufacturer's recommendations. Dwelling units using alternate methods shall maintain eighty-eight (88) degrees or less in at least one (1) habitable room. Such facilities shall be installed and maintained in a safe condition and in accordance with the manufacturer's recommendations. Temperature measurements shall be made in the center of the room, five (5) feet above the floor. Any mounting apparatus for a cooling facility must be structurally sound. [Source: Scottsdale Code 29.1-15; Tempe 21-34]

* * *

SECTION 3. The Tucson Code, Chapter 16, Article II, Section 16-12, is amended by amending subsections (A) and (E), and by adding a new subsection (F), to read as follows:

Sec. 16-12. Building and Structure Exteriors.

(a) *Exterior surfaces*

- (1) *Weather protection.* All weather-exposed exterior surfaces of every building, including windows and doors, shall provide weather protection. Every building shall be weather protected to provide shelter for the occupants against the elements and to exclude moisture and dampness.

- (2) *Protective treatment.* All exterior wood surfaces, except for decay-resistant woods, must be protected from deterioration and from the elements by paint or other protective treatment or covering. Where fifty (50) percent or more of an exterior wood surface has paint that is peeling, flaking, cracked, blistered or chipped, resulting in bare, unprotected surfaces, the deteriorated condition of that surface must be eliminated and the surface repainted. All metal surfaces subject to corrosion or rust must be treated or coated to inhibit corrosion and rust, unless corrosion or rust is a design element.

(3) **Boarded window or door openings.**

- (A) No occupied structure may have boarded window or door openings, except as necessary on a temporary basis to keep the structure secure while under repair.
- (B) While vacant structures may temporarily be secured by boarding up window and door openings in accordance with Section 16-14(B), having or maintaining boarded window or door openings on a vacant structure for one hundred eighty (180) days or more in any one year period is prohibited.

* * *

(e) *Accessory structures.* All accessory structures, including but not limited to detached garages, fences and walls, must be structurally sound and free of disrepair. Examples of disrepair include missing slats or blocks, or damage, rot, or deterioration to fifty percent (50%) or more of the fence or wall. Fences and walls cannot be constructed or covered with materials not designed or commonly used for that purpose, such as pallets and tarps. Fences and walls must be properly anchored so as not to be in danger of failure or collapse.

(f) Address display

1. General requirements:

- a. All structures, whether new or existing, designed for human occupancy or use which have an assigned address shall display the address in a manner to be plainly legible and visible from the street or road fronting the property.
- b. Upon commencement of construction, the assigned address shall be displayed at the primary access of the subject lot parcel or structure. The address display may be temporary signage during construction.

- c. Permanent address display shall be installed on all buildings, tenant spaces and entrance signage, or as otherwise required by this section, prior to building inspection final approval, certificate of occupancy or occupancy of any building or structure. Display shall be required at all times thereafter, conforming to this section.
- d. More than one address or number display may be required for each building or site.
- e. The complete address shall be displayed on all corner buildings at a street intersection, for each side of the building facing any street.
- f. Addresses shall be displayed and visible from both directions of approaching vehicular travel.
- g. Numbers and letters shall be made of durable and clearly visible material. Paint shall not be considered durable for building addresses.
- h. Numbers and letters shall be of colors contrasting with the background of the sign or wall to which they are attached.
- i. Numbers and letters shall have a minimum proportion ratio of height to width of six to one. The formula is $w = h/6$, where w is width and h is height in inches.
- j. Numbers shall not be spelled.
- k. All height requirements stated in this section are minimum sizes.

2. Residential requirements: The address numbers assigned shall be conspicuously placed immediately at the appropriate location on each building, structure entrance or at the property access point.

- a. For properties containing multiple addresses, addresses shall be placed near the primary entrance in addition to the structure placement.
- b. A building or structure set back fifty feet or more from the curb line or edge of pavement shall permanently display the address a minimum of thirty-six inches from ground level at the primary access point of the property. Structure display may also be required by the addressing official.
- c. Minimum number height shall be three inches.

3. Apartments: The address numbers assigned shall be conspicuously placed immediately at the property access points, appropriate locations on each building, and structure entrances.

- a. Building numbers shall be a minimum of fifteen inches in height.
- b. Apartment number ranges shall be placed below building numbers or on signage near the building. Apartment number ranges shall be a minimum of eight inches in height.
- c. Individual apartment numbers shall be a minimum of three inches in height for exterior entrances and a minimum of one inch in height for interior (hallway) entrances.
- d. Both exterior signage and interior numbering may be required by the addressing official on specific development types.

4. Apartment complex with multiple buildings:

- a. All buildings shall have pedestrian directional signage visible from both directions of pedestrian travel, with numbers a minimum of two inches in height.
- b. All interior accessory buildings, structures and pool areas shall be identified and have directional signage.
- c. The apartment complex shall have entrance signage at all access points addressed.
- d. For access points that enter the complex from other than the addressed street, the complete address shall be displayed on entrance signage.
- e. Site and building addresses shall be visible at all times.

5. Commercial: The address number assigned shall be conspicuously placed immediately at each property access point, and the appropriate locations on each building, and each structure entrance.

- a. Buildings or structures set back no more than fifty feet from the curb line or edge of pavement shall display a twelve-inch minimum height number.

- b. Buildings or structures set back more than fifty feet from the curb line or edge of pavement shall display a fifteen-inch minimum height number.
- c. Individual addresses shall be placed near the primary entrance, a minimum of three inches in height.
- d. The low and high number range may be displayed on buildings with multiple addresses, a minimum of twelve inches in height.
- e. Site and building addresses shall be visible at all times.

6. RV and mobile home park: The address numbers assigned shall be conspicuously placed immediately at each property access point, and at the appropriate locations for each building, structure, and property rental space.

- a. Number height:
 - i. Space, directional signage and internal street signage numbers shall be a minimum of three inches; and
 - ii. Building numbers shall be a minimum of six inches.
- b. Park owners shall provide current maps of the park, describing the locations of structures, buildings and spaces, to the fire code official upon request.

7. Entrance signage: Where this section requires entrance signage, the address or address numbers assigned shall be placed at primary access points immediately and shall be permanently installed prior to first occupancy of any internal structure or building.

- a. Numbers or address shall be a minimum of twelve inches in height on all entrance signage.
- b. Complete address display shall be required at all street access points in addition to the primary access street.

Source – Pima County Code 18.83.050 (adopted by reference under 2000 IFC local amendment 505)

SECTION 4. The Tucson Code, Chapter 16, Article II, Section 16-13, is amended by amending subsections (A) and (C), and by adding a new subsection (G), to read as follows:

Sec. 16-13. Exterior premises and vacant land.

(a) *Accumulation of vegetation prohibited.* Each owner, lessee, tenant, resident or occupant shall maintain a property so it is free of the accumulation or untended growth of vegetation. The accumulation or untended growth of vegetation means the presence of plants on property that create a fire, safety or health hazard, or that attract vermin either on the property, on neighboring properties, or on both, and includes but is not limited to:

- (1) Any lawn grass that exceeds six (6) inches in height.
- (2) All weeds that exceed ~~ten (10)~~ six (6) inches in height.
- (3) Dead plants or dead parts of plants of any kind.

(4) Any tree, shrub, or other form of vegetation of any kind on the property or on the adjoining right-of-way, street, or alley that extends over or under the sidewalk space or roadway in a manner that may interfere with the reasonable use of the street, sidewalk, or alley for pedestrian or vehicular traffic of any kind or that may obstruct the view or light distribution of traffic-control devices or luminaries. **[Source – T.C. 25-53]**

* * *

(c) *Composting permitted on residential property; standards and procedures; violation.*

The provisions of subsections (a) and (b) of this section do not prohibit the maintenance of a compost pile on residential property, so long as the compost pile does not create a hazard and is:

- (1) Contained;
- (2) Maintained so as not to produce offensive odors or attract flies or vermin;
- (3) Located, insofar as reasonably possible, so that it is not visible from abutting properties or streets;
- (4) Maintained in compliance with all rules, regulations and procedures that may be promulgated by the director of the ~~solid waste management department~~ Utility Services.

A compost pile not in compliance with all the provisions of this section is in violation of this chapter.

* * *

(g) Exterior hazard or attractive nuisance

All premises shall be kept free of any condition that constitutes a health hazard, imminent hazard, or attractive nuisance. Such prohibited conditions include, but are not limited to, the following:

- (1) Abandoned refrigerators. All premises shall be kept free of iceboxes, refrigerators or other containers with a capacity of one and one-half (1.5) cubic feet or greater that have an attached door or lid, snaplock or other locking device that may not be released from the inside and that are abandoned, discarded or no longer used for refrigeration and are in any place accessible to children. In addition to any other remedy provided under this Ordinance, a Code Official may immediately and without prior notice remove an attached door, lid or other locking device or take other similar action to abate the hazard presented. [Source: Tempe NPO, 21-3; ARS 36-1651]
- (2) Hazardous excavations. All premises shall be kept free of abandoned or unsecured excavations; or any excavation that creates a hazard to public safety or an attractive nuisance. An excavation made under permit and secured and maintained in a manner that complies with the applicable permit requirements is not considered a violation of this section. [Source: Scottsdale NPO, 18-5(9)]
- (3) Hazardous pools. Any swimming pool or other contained body of water that contains water eighteen inches or more in depth at any point and that is wider than four feet at any point and is intended for swimming must be properly secured and maintained so as not to create a hazard to public safety, a health hazard or attractive nuisance, and shall be entirely enclosed by a wall, fence or other barrier that is adequate to prevent access by children. Water shall not be allowed to stagnate or to harbor insect infestation. [Source: Phx NPO, 39-7(C) – modified to remove reference to spa/pool code, and to match up with our other adopted codes (see our Sec AG105 of local amendment to IRC)]

SECTION 5. The Tucson Code, Chapter 16, Article II, Section 16-14(B), is amended to read as follows:

Sec. 16-14. Dilapidated structures; vacant and unsecured structures; buildings and structures constituting a nuisance.

* * *

(b) Vacant and unsecured buildings or structures

Vacant and unsecured buildings or structures are unlawful and are prohibited by this chapter.

(1) Duty to clean, ~~and secure~~ and prohibit trespass.

The owner or responsible party of a vacant building or structure shall remove any accumulation of weeds, combustible waste, or refuse from the interior of the building or structure and the surrounding yards; and shall secure all doors, windows, and other openings to prevent unauthorized entry. The owner or responsible party also shall post both the structure and the exterior premises with signs to provide conspicuous and reasonable notice prohibiting entry (i.e., "No Trespassing" signs).

(2) Reinspection of secured buildings and structures.

The code official shall periodically reinspect a building or structure that was cleaned or secured pursuant to an administrative or judicial order to ensure continued compliance with the order and this chapter. The code official may assess a reinspection fee for actual costs of each inspection in those instances where the building or structure is again found to be vacant and unsecured or in need of debris or weed removal.

(3) Abatement of vacant and unsecured buildings

When ordered abated, a vacant and unsecured building shall be cleaned and secured as follows:

- a. All accumulated debris or refuse that poses a fire or health hazard within or upon the property or premises shall be removed; and
- b. All unsecured doorway, windows, or exterior openings shall be barricaded in accordance with standards established by the code official, which shall be kept on file with the city clerk, and in accordance with Section 16-12(A)(3) of this Ordinance; and
- c. Both the structure and the exterior premises shall be posted with signs that provide reasonable notice prohibiting entry (i.e., "No Trespassing" signs).

* * *

SECTION 6. The Tucson Code, Chapter 16, Article II, Section 16-15, is amended to read as follows:

Sec. 16-15. Junked ~~motor or inoperable~~ vehicles.

(a) Prohibited storage

(1) No person owning or having custody of any junked ~~motor or inoperable~~ vehicle may store such vehicle on private property, or on any sidewalks, streets or alleys, within the city, except as otherwise permitted under this section;

_____(2) No person owning, ~~or occupying or in control of~~ any private property within the city may store any junked ~~motor or inoperable~~ vehicle on the owned or occupied property, or on any abutting sidewalks, streets or alleys, except as otherwise permitted under this section;

(b) Permitted storage

This section shall not apply to any junked ~~motor or inoperable~~ vehicle stored on private property if the vehicle:

(1) Is on the premises of a business enterprise operated in a lawful place and manner and licensed by the City under chapter 19 of the Tucson Code, and the storage of the vehicle is necessary to the operation of the business enterprise; or;

(2) Is lawfully enclosed within:

a. An enclosed garage or other permanent building lawfully constructed of opaque materials without openings, holes or gaps other than doors and windows;

b. A carport, if and an opaque car cover designed for that purpose (and not including tarps, bed sheets, plastic sheeting, or similar materials) completely covers the body of the vehicle; or

c. Any fence, wall or barrier, not less than five (5) feet in height, constructed of opaque materials without openings, holes or gaps other than gates or doors, completely enclosing the vehicle, and equipped with self-latching gates or doors. Such fence, wall or barrier must comply with section 16-12(e).

(c) *Persons responsible*

Whenever the city finds that any junked motor or inoperable vehicle is stored on private property or on any abutting sidewalks, streets or alleys in violation of this section, the persons responsible for the violation include the recorded owner, or occupant or person in control of the private property, as well as the registered owner or custodian of the vehicle.

(d) *Evidence of abatement*

Within fifteen (15) days from the issuance of the civil infraction citation or civil infraction complaint or at the first appearance date, whichever date comes first, the judge or hearing officer shall dismiss the civil citation or civil complaint if the defendant produces at the administrative hearing office competent evidence of abatement as set forth in this subsection; and, if necessary, the first appearance date may be continued to permit City verification of the abatement.

Abatement shall consist of one (1) or more of the following:

- (1) Lawfully storing the vehicle; or
- (2) Lawfully registering the vehicle and affixing thereto unexpired number or license plates assigned to the vehicle by any state
- (3) Eliminating the condition (i.e. wrecked, inoperable, etc.) that causes the vehicle to be deemed a junked or inoperable vehicle.

(e) *Evidence of registration*

~~Photographic evidence showing that the vehicle did not have affixed unexpired number or license plates on the date of the violation shall constitute prima facie evidence that the vehicle was not then currently registered and licensed.~~
Evidence of the current registration for that the vehicle may be presented as a defense to the violation.

(f) *Authorization to enter private property for vehicle examination, information gathering, and vehicle removal pursuant to hearing officer court order*

~~Upon reasonable belief that a vehicle is in violation of this section, any city department may enter upon private property to examine the vehicle, or obtain information as to the identity of the owner of the vehicle. Further, a~~Any city department code official or such persons as may be directed by such department code official may enter private property to remove or cause the removal of a vehicle upon order of a hearing officer the court pursuant to section 16-60.

(g) *Penalty; violation declared a nuisance*

1. A violation of this section is punishable in accordance with section 16-48 of this chapter.
2. The unlawful storage of any junked motor or inoperable vehicle on any private property within the city in violation of this section is declared dangerous to the public safety and a public nuisance.

SECTION 7. The Tucson Code, Chapter 16, Article IV, Section 16-30(B), is amended to read as follows:

Sec. 16-30. Graffiti prevention, prohibition and removal.

* * *

(b) *Prohibited conduct; penalties*

- (1) No person may write, paint, or draw any inscription, figure, or mark of any type on any public or private building or other real or personal property unless permission of the owner or operator of the property has been obtained.
- (2) No person may possess an aerosol spray paint container on any private property unless the owner, agent, manager, or other person having control of the property consented to the presence of the aerosol spray paint container.
- (3) No person under the age of eighteen (18) may possess an aerosol spray paint container on any public property unless the possession is for a lawful purpose and the person is accompanied by a parent, guardian, teacher or other person in a similar relationship over the age of eighteen (18).
- (4) No person under the age of eighteen (18) may buy any aerosol spray paint container from any person or firm.
- (5) Penalties: A violation of this subsection shall constitute a class one (1) misdemeanor and shall be punished as provided below. No judge shall suspend the imposition of any of the mandatory minimum penalties required by this section.
 - a. A person convicted of violating subsection (1) shall be punished by a term of not less than forty-eight (48) hours in jail, a fine of not less than two hundred and fifty dollars (\$250.00) and not less than eighty (80) hours community service ~~involving participation in the removal of graffiti~~. In addition to any other punishment, the court shall order restitution to the victim for damage or loss caused directly or indirectly by the defendant's

offense in an amount to be determined by the court. Persons under the age of eighteen (18) will be punished as provided for in A.R.S. Tit. 8.

- b. A person convicted of violating subsection (2) or (3) shall be punished by a term of not less than twenty-four (24) hours in jail, a fine of not less than one hundred (\$100.00) dollars and not less than forty (40) hours of community service involving participation in the removal of graffiti. Persons under the age of eighteen (18) will be punished as provided for in A.R.S. Tit. 8.
- c. A person convicted of violating subsection (4) shall be punished as provided for in A.R.S. Tit. 8.

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SECTION 8. The Tucson Code, Chapter 16, Article IV, Section 16-31(B), is amended to read as follows:

Sec. 16-31. Excessive noise.

* * *

(b) Other noises prohibited; standards for excessive noise

Some sounds may be such that they are not measurable by the sound level meter or may not exceed the limits set forth in subsection (a) of this section, but nonetheless may be excessive and may disturb the public peace and quiet of a neighborhood or person. Noises prohibited by this subsection are in violation of this chapter notwithstanding the fact that there is no apparent violation of subsection (a) of this section. The following activities are prohibited if they produce plainly audible sound beyond the property line of the property on which they are conducted and they disturb the public peace and quiet of a neighborhood or person:

- (1) Allowing or causing any continuous or intermittent noise that persists for a period of at least fifteen (15) minutes and which is caused by using, operating or permitting to be played any radio, television, tape deck, record player, amplifier, musical instrument, or instrument, machine or device used for the production, reproduction or emission of sound;
- (2) Creating or allowing a loud, disturbing noise in connection with the loading or unloading of any vehicle;
- (3) Owning, possessing, harboring or permitting any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or

makes other sounds. Any peace officer or any county animal control officer is hereby authorized to issue citations to owners for any violation of this subsection;

- (4) Allowing or causing any shouting, yelling, screaming or any other form of raucous vocalization by a person or group of people.

* * *

SECTION 9. The Tucson Code, Chapter 16, Article IV, Section 16-32, is

amended to read as follows:

Sec. 16-32. Unruly Gatherings.

(a) Definitions.

For the purposes of this section, unless the context otherwise requires, the following terms or phrases are defined as:

Owner means any owner, as well as any agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy or use of the property.

Premises means the property that is the site of an unruly gathering. For residential properties, premises means the dwelling unit or units where the unruly gathering occurs.

Unruly gathering means a gathering of five (5) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering.

(b) ~~Loud or unruly gatherings unlawful~~ Abatement of unruly gathering

~~An unruly gathering is unlawful and constitutes a civil infraction. A peace officer may abate an~~ An unruly gathering may be abated by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersal of the persons attending the gathering.

(c) Notice of unruly gathering; posting; removal of notice prohibited; right to contest posting

(1) Contents of notice.

The premises at which the unruly gathering occurs shall be posted with a notice stating:

- a. That an unruly gathering has occurred at the premises;
- b. The date of the unruly gathering;
- c. That any subsequent unruly gathering on the same premises within a one hundred eighty (180) day period shall result in liability for the penalties provided in this section. Parties liable include any persons in attendance causing the gathering to be unruly, or any owner, occupant or tenant of the premises at which the unruly gathering occurred, or any sponsor of the event constituting the unruly gathering; and
- d. The right to contest the posting as provided in subsection (c)(4) of this section.

(2) *Posting requirements.*

Premises shall be posted with a notice as provided in this section each time an unruly gathering occurs. The owner, occupant or tenant of the premises or sponsor of the event constituting the unruly gathering, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

In the event that a premises is already posted at the time of a subsequent posting, the one hundred eighty (180) day period from the date of the existing posting shall be extended to one hundred eighty (180) days from the date of the subsequent posting. Once a premises is initially posted as a result of an unruly gathering and the conduct causing the gathering to be unruly has ceased, a resumption of unruly behavior on the premises resulting in another police response shall constitute a new and separate unruly gathering for purposes of this section.

(3) *Removal of notice prohibited*

The owner, occupant, or tenant of the posted premises shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice is a civil infraction carrying a penalty of a minimum, mandatory one hundred dollar (\$100.00) fine, in addition to any other penalties which may be imposed under this section.

(4) *Right to contest posting*

- a. An owner, occupant, or tenant of the posted premises may contest the posting of the notice by filing a written petition for review with

the civil infractions division of the City Court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten (10) days after the posting of the notice or, if the notice is given by mail, within fifteen (15) days after the date of the mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the written petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. In order to avoid the possibility of conflicting rulings, if more than one petition is filed under this subsection relating to a single posting, for example by multiple lawful occupants of the posted premises, the court shall set only one hearing and shall consolidate the petitions and notify all petitioners of the hearing date and time. At the hearing, the city has the burden of proving by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this section.

- b. An owner of a posted premises, at any time after the posting or the mailing of the notice, may petition the court for an order directing the removal of the notice on the grounds that the owner has taken reasonable and necessary actions, such as evicting a tenant responsible for the violation, to prevent the occurrence of a subsequent unruly gathering at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. At the hearing, the petitioner has the burden of proving by a preponderance of evidence that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent unruly gathering. This petition process is not available to an owner who was present at the unruly gathering and engaged in conduct causing the gathering to be unruly.

(d) Notification of property owner

- (1) Notification of the posting of the notice of unruly gathering shall be mailed to any property owner at the address shown on the Pima County Property Tax Assessment Records. The notification shall advise the property owner that any subsequent unruly gathering within one hundred eighty (180) days on the same premises shall result in liability of the property owner for all applicable penalties as provided in this article. Notification shall be made by certified mail. The return receipt shall be prima facie evidence of service.

- (2) Additionally, notice shall be provided to an agent of the owner who controls or regulates the use of the premises, if known. Notice to the owner's agent may be provided by hand delivery or by certified or regular mail sent to the agent's last known address.
- (3) The failure to serve notice to any person described in this subsection shall not invalidate any citation or other proceedings as to any other person duly served, or relieve any such person from any duty imposed by this section.

(e) *Unruly gathering a civil infraction; parties responsible*

An unruly gathering is unlawful and constitutes a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(1):

- (1) The person or persons who organized or sponsored the event constituting the unruly gathering, including any owner or occupant in attendance at the unruly gathering.
- (2) Any person in attendance at the unruly gathering who engaged in any conduct causing the gathering to be unruly.

(f) *Subsequent unruly gathering a civil infraction; parties responsible*

The occurrence of an unruly gathering on the same premises more than once in any one hundred eighty day period is a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(2):

- (1) The owner of the property where the subsequent unruly gathering occurred, if either:
 - a. The owner was present when the property was posted, or
 - b. notification of posting was mailed or delivered to the owner of the property per subsection (d), and the subsequent unruly gathering occurred not less than two (2) weeks after the mailing of such notification.
- (2) The occupant or tenant of the property where the subsequent unruly gathering occurred.

- (3) The person or persons who organized or sponsored the event constituting the subsequent unruly gathering.
- (4) Any person in attendance at the subsequent unruly gathering who engaged in any conduct causing the gathering to be unruly.

Nothing in this section shall be construed to impose liability on the owner, occupant, or tenant of the premises or sponsor of the event constituting the unruly gathering, for the conduct of persons who are in attendance without the express or implied consent of the owner, occupant, tenant, or sponsor, as long as the owner, occupant, tenant or sponsor has taken steps reasonably necessary to prevent a subsequent unruly gathering or to exclude the uninvited persons from the premises, including owners who are actively attempting to evict a tenant from the premises. Where an invited person engages in unlawful conduct which the owner, occupant, tenant or sponsor could not reasonably foresee and could not reasonably control without the intervention of the police, the unlawful conduct of the person shall not be attributable to the owner, occupant, tenant or sponsor for the purposes of determining liability under this section.

(g) *Penalties*

(1) *Unruly gathering.*

The penalty for a party found responsible for an unruly gathering, as provided in subsection (e), shall be a minimum mandatory fine of one hundred dollars (\$100.00).

(2) *Subsequent unruly gathering.*

The penalty for a party found responsible for the occurrence of a subsequent unruly gathering, as provided in subsection (f), shall be a minimum mandatory fine of five hundred dollars (\$500.00) for a first violation, a minimum mandatory fine of one thousand dollars (\$1,000.00) for a second violation, and minimum mandatory fines of one thousand five hundred dollars (\$1,500.00) for each third or subsequent violation.

(3) *Abatement.*

The civil fines provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an unruly gathering. The court shall also enter an order of abatement against a party found responsible for a violation of this section pursuant to Chapter 8 of the Tucson Code.

(h) *Enforcement*

The police department is authorized to enforce the provisions of this section provided that enforcement is initiated by a complaint from a member of the public. The

complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible.

SECTION 10. The Tucson Code, Chapter 16, Article IV, is amended to add a new Section 16-35 to read as follows:

Sec. 16-35. Obstructing streets, alleys or sidewalks prohibited.

No person shall obstruct any public sidewalk, street or alley in the City by placing, maintaining or allowing to remain thereon any item or thing that prevents full, free and unobstructed public use in any manner, except as otherwise specifically permitted by law. [Source – T.C. 25-51].

SECTION 11. The Tucson Code, Chapter 16, Article IV, is amended to add a new Section 16-36 to read as follows:

Sec. 16-36. Posting of Handbills Prohibited.

A. Posting prohibited. No person shall post, affix, display, paint or attach; or direct, permit, or cause any other person to attach any handbill upon any street lamp post, street sign, traffic sign or signal, traffic control device, curb, sidewalk, hydrant, tree, shrub, utility pole or any other public building, structure or object except as may otherwise be required or authorized by law; or upon any private structure or building, without the consent of the owner or person in control thereof.

B. Presumption. For purposes of this section, there shall be a rebuttable presumption that any person or entity whose name, address, telephone number, e-mail address or other identifying information is indicated on the handbill, and any owner, manager, or responsible party of any business, product or service which is the subject of the handbill, has directed or caused the posting or attaching of the handbill in violation of subsection (A).

C. Penalty. A violation of this Section is a civil infraction. In addition to any other penalties prescribed by law, any person found responsible for violating this Section shall be fined not less than two hundred fifty dollars (\$250.00). Each handbill illegally posted shall constitute a separate violation, and shall be subject to a separate fine. In addition to the minimum fine(s), upon finding any person responsible for violating this Section, the court shall order that person to reimburse the City for its costs in the removal of the illegal handbill(s) pursuant to subsection (D), as documented by a statement of costs presented to the Court by the City.

D. Enforcement and abatement by Code Official. The Code Official is authorized to enforce the provisions of this Section. The Code Official may, but is not required to, initiate enforcement by issuing a Notice of Violation pursuant to Section 16-45 to the

person(s) responsible for a violation of this Section, and therein direct and order the responsible person(s) to remove of the unlawful handbill(s). The Code Official is further authorized to remove or cause the removal of any handbills posted in violation of this Section, with or without giving prior notice to the person(s) responsible for the violation.
[Source: T.C. 11-57; Phx and Scottsdale handbill ordinances]

SECTION 12. The Tucson Code, Chapter 16, Article V, Section 16-45,

subsections (A), (B) and (D), are amended to read as follows:

Sec. 16-45. Notice of violation.

- (a) If the code official finds a violation of sections 16-4, 16-11, 16-12, 16-13, 16-14, 16-15, ~~or 16-30(a), 16-35 or 16-36~~ of this chapter, the code official may notify the owner or responsible party through the issuance of a notice of violation.
- (b) A notice of violation issued pursuant to this section shall include:
 - (1) The identification of the property in violation; a street address ~~and or~~ legal description of the property is sufficient identification of the property;
 - (2) A statement of the violations in sufficient detail to allow an owner or responsible party to identify and correct the problem;
 - (3) A statement of the actions required to correct and abate the violations. The statement of required action shall direct the owner or responsible party to perform whatever action is reasonably necessary to correct the violations, including clean-up, extermination, repair, rehabilitation, vacation of the building or structure, and/or demolition;
 - a. If the action required is a repair, the notice shall direct that all required permits be secured for the repair, and that the repair work shall be commenced and completed within such time, not to exceed sixty (60) days, as the code official determines is reasonable under the circumstances.
 - b. If the action required includes the vacation of a building or structure, the notice shall direct that the building or structure be vacated within a time certain as the code official determines is reasonable under the circumstances.
 - c. If the action required includes demolition and removal of a building or structure, the notice shall direct that the building or structure be vacated within a time certain as the code official determines is reasonable under the circumstances; that all permits required for the demolition be secured within sixty (60) days from the date of the notice; and that the demolition

and removal be completed within a time certain as the code official determines is reasonable under the circumstances.

d. If the action required is the abatement of a hazardous excavation, the notice shall direct any or all of the following actions be completed within a time certain as determined to be reasonable by the code official:

i. Securing the excavation by completely surrounding either the excavation or the property with a fence or other enclosure that is at least five feet (5') in height at all points;

ii. Securing the excavation by completely covering the excavation in a manner that prevents any access to the excavation and eliminates any hazard or attractive nuisance;

iii. Completely filling the excavation with clean fill.

(4) The address and phone number of a City representative to contact;

(5) A statement describing the City's authority to abate should the owner or responsible party not correct the violation within the time specified in the notice, and to assess a lien against the property for the costs of abatement;

(6) A statement advising that any person having any legal interest in the property may appeal from the notice in the manner specified in this chapter, and that failure to appeal will constitute a waiver of all rights to an administrative determination and hearing of the matter.

* * *

(d) The notice shall be served upon the record owner and/or the responsible party in the manner described in subsection (e) of this section. In addition, the notice shall be served on the holder of any legal interest in the property, if known to the code official, and in cases involving an order to vacate, upon any lawful tenant. Any failure to serve any person holding legal interest in the property shall not invalidate any proceedings as to any other person duly served, and shall not relieve any such person from any obligation imposed by this chapter.

* * *

SECTION 13. The Tucson Code, Chapter 16, Article VI, Section 16-60(A), is amended to read as follows:

Sec. 16-60. Court ordered abatement.

- (a) Upon finding a person guilty or responsible for a violation of any provision of this chapter, the court shall order such person to perform whatever action is reasonably necessary to correct and abate the violations, including clean-up, board-up, extermination, repair, rehabilitation, vacation of the building or structure, permanently securing or filling the excavation, and/or demolition. An abatement order shall be effective for one (1) year unless stayed on appeal. If stayed on appeal, the order shall be effective for one (1) year from the end of the appeal if the judgement and sentence are upheld. If more than one (1) person is guilty or responsible for a violation, such persons shall be jointly and severally responsible for completing the abatement.

* * *

SECTION 14. The Tucson Code, Chapter 16, Article VI, Section 16-61,

subsections (A) and (G), are amended to read as follows:

Sec. 16-61. Abatement by the city.

- (a) In addition to ordering abatement of a violation as provided in section 16-60, upon finding a person guilty or responsible for a violation of any provision of this chapter, the court may issue an order authorizing the city to perform whatever action is reasonably necessary to correct and abate the violation, including clean-up, board-up, extermination, repair, rehabilitation, vacation of the building or structure, disconnection of utilities, permanently securing or filling the excavation, and/or demolition.

* * *

- (g) If the code official observes a violation of sections 16-13(a), (b), (c), (d), (e) or 16-33 and serves a written notice of violation pursuant to section 16-45 and the violation has not been completely abated within thirty (30) days, then the violation is presumed to constitute a health or fire hazard. The code official may then go upon the property and abate the violation at the expense of the owner or responsible party. Any and all costs arising from the city's action to abate the violation shall be a lien filed against the real property that is the subject of the violation. A verified statement of the costs or expenses shall be prepared and charged pursuant to rules, procedures and regulations promulgated by the director of solid waste management Utility Services to the last-known address of the responsible person. In determining costs, the city may charge twice the rate established by mayor and council resolution for the collection of trash and refuse. If the charged person has a utility services account with the city, the costs shall be charged to that account. If more than one (1) person is responsible for the violation, such persons shall be jointly and severally responsible for the payment

of costs or expenses of the abatement. The payment may be in addition to any civil or criminal penalty imposed pursuant to this Code.

* * *

SECTION 15. The Tucson Code, Chapter 16, Article VI, Section 16-62, is

amended to read as follows:

Sec. 16-62. Temporary abatement.

If it is determined that a nuisance as provided in section 16-14 is a hazard to the public safety and health, the code official may declare such structure a hazard. After notice is communicated to any owner of record to secure the structure and the owner does not secure the structure to city specifications, the hazard may be summarily abated by the city through boarding. The City may also post both the structure and the exterior premises with signs to provide reasonable notice prohibiting entry (i.e., "No Trespassing" signs). Any and all charges and costs arising from the city taking action to secure the structure shall be a lien filed against the real property containing such a structure.

SECTION 16. The Tucson Code, Chapter 16, Article VII, Section 16-71, is

amended to read as follows:

Sec. 16-71. Administrative Conference.

- (a) Any notice of violation or slum designation described in section 16-70 can be appealed to the code official for an administrative conference for review of such notice of violation or slum designation. An appeal shall be made to the code official in the following manner:
- (1) The applicant shall file a written appeal on the forms provided by the code official and accompanied by a non-refundable fee, as determined by separate ordinance, ~~on or before Friday of each week, not later than 4:30 p.m.~~ within ten (10) days after the date of service of the notice.
 - (2) The appeal will be heard by the code official within ten (10) days at a regular, specified time.
 - (3) The code official may use a hearing committee consisting of such staff as the code official deems appropriate or other technical persons to advise the code official on a particular appeal.
 - (4) The applicant shall provide adequate information to fully describe the conditions in question.

- (5) The applicant may, but is not required to, meet personally with the code official.
- (b) If the code official denies an appeal made under this section, the applicant must comply with the decision of the code official or may appeal to the board of appeals pursuant to section 16-73 of this chapter.
- (c) Failure to file an appeal in accordance with the provisions of this section constitutes a waiver of the right to an administrative conference. Additionally, any person who appeals directly to the board of appeals pursuant to section 16-73 waives the right to an administrative conference.

SECTION 17. The Tucson Code, Chapter 16, Article VII, Section 16-73, is amended to read as follows:

Sec. 16-73. Appeals to the board of appeals.

- (a) An owner or responsible party who is not or was not a party to a pending or adjudicated court proceeding involving a request for court ordered abatement of the violation (hereinafter, the appellant) may appeal a notice of violation or slum designation described in section 16-70 to the board of appeals (hereafter board) established in Tucson Code section 6-12 and section 204 of the Administrative Code, when it is claimed that:
 - (1) Substantive errors exist in the notice of violation or the slum designation.
 - (2) The method or schedule for correcting the violation as set forth in the notice of violation is unreasonable or arbitrary.
- (b) An owner or responsible party whose relationship with the property existed at the time of the recording of an assessment, and who is not or was not a party to a court proceeding which has established or may establish the amount of an assessment, may appeal the amount of the assessment for abatement to the board.
- (c) In cases involving an order to vacate, any lawful tenant of the property that is the subject of the order to vacate may appeal that order to the board on the grounds that the order to vacate is unreasonable or arbitrary.
- ~~C.~~(d) The appellant shall prepare the appeal in a written application as follows:
 - (1) The appellant shall file a written appeal on the forms provided by the code official and accompanied by a non-refundable fee, as determined by separate ordinance;

- (2) The appellant shall provide adequate information to fully describe the conditions in question;
- (3) The application for appeal shall contain each appellant's signature and mailing address to which the decision of the board may be mailed;
- (4) The appellant shall provide a brief statement describing the legal interest of each of the appellants in the property involved in the proceeding;
- (5) The appellant shall verify by declaration under penalty of perjury the truth of the matters stated in the application;
- (6) The appeal shall be filed within thirty (30) days from the date of the service of the notice of violation or notice of designation as a slum property; provided, however, that if the building or structure is in such condition as to make it an imminent hazard and is posted and vacated in accordance with sections 16-63 and 16-64 of this chapter, an appeal shall be filed within ten (10) days from the date of the service of such notice.

~~D.~~(e) Except for vacation orders made pursuant to sections 16-63 and 16-64, the timely filing of an appeal shall act as an automatic stay of enforcement of the notice of violation until the appeal is finally determined by the board. The filing of an appeal does not stay enforcement of any notice or order, or any provision thereof, where the notice or order includes an order to vacate.

~~E.~~(f) As soon as practicable after receiving the written appeal, the board shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than ten (10) days nor more than sixty (60) days from the date the appeal was filed. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the secretary of the board, either by causing a copy of the notice to be delivered personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

~~F.~~(g). Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of the right to a administrative hearing of the appeal and adjudication of the notice of violation or notice of designation as a slum, and such person shall be estopped to deny the validity of any order or action of the city which could have been timely appealed.

~~G.~~(h) The board shall decide any appeal immediately after the hearing, or within a reasonable time thereafter, but in no event shall the board keep an appeal under consideration for more than five (5) days after the hearing. The board shall render its decision in writing, and the decision of the board shall be filed with the secretary of the board, with a copy to the appellant or applicant. The decision of the board is final. No further appeal is available to city or county boards or officials. In cases

involving the designation of a property as a slum. Persons—persons aggrieved by decisions of the board may appeal the decision pursuant to A.R.S. Tit. 12, Ch. 7, Art. 6, or pursuant to successor provisions relating to judicial review of administrative decisions. In all other cases, persons aggrieved by decisions of the Board may apply to Superior Court for relief in accordance with the Arizona Rules of Procedure for Special Actions. In the absence of a court order, the filing of an appeal or special action will not stay enforcement. [Source: the Admin Review Act; ARS 33-1905; Phx NPO 39-37(J)]

SECTION 18. The Tucson Code, Chapter 16, Article VII, Section 16-74(A), is amended to read as follows:

Sec. 16-74. Powers, duties and responsibilities of the board.

(a) Appeals

- (1) On an appeal, the board may affirm, reverse, or modify the notice of violation or notice of designation as a slum. In the event that the board modifies the notice, the following limitations and procedures shall apply:
 - a. If the appeal is taken on the grounds that the amount of time for correction of the violation given in the notice of violation is unreasonable, upon a showing by the appellant that the time is unreasonable, and upon a satisfactory showing by the appellant that there is a reasonable probability that the appellant will be able to correct the violation by the granting of additional time, the board may grant up to an additional 90 days to correct the violation. The board may permit city staff to grant additional time of up to ninety (90) days if during the initial time extension the appellant has substantially complied with any plan or timetable approved by the Board.
 - b. If the appeal is taken on the grounds that the method to correct the violation as specified in the notice of violation is unreasonable, the board may approve an alternate method of correction as long as the purposes of this chapter are fulfilled.
 - c. In the event that the appeal is taken on the grounds that the cost of the abatement is unreasonable, the board may affirm, modify or reverse the lien or assessment amounts resulting from the abatement for good cause shown.

d. If the appeal is taken on the grounds that an order to vacate is unreasonable or arbitrary, the board may affirm, reverse, or modify the order to vacate.

- (2) In order to assist it in making the determinations set forth above, the board may take evidence from the appellant, city staff, and any other person. Any relevant evidence is admissible, including hearsay evidence, if it would assist the board in making its decision.

* * *

SECTION 19. Section 11-57 of the Tucson Code, including Sections 11-57(1) through 11-57(8), relating to handbills, is repealed. The remaining Sections of Chapter 11 of the Tucson Code shall retain their current numbering.

SECTION 20. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist and this ordinance shall be effective upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

MR:dc

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